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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------|---------------------|------------------|
| 09/998,423  | 12/03/2001  | Alfonso Fernandez Duran | Q67470              | 5961             |
| 23373   | 7590        | 04/07/2006              | EXAMINER            |                  |
| SUGHRUE MION, PLLC<br>2100 PENNSYLVANIA AVENUE, N.W.<br>SUITE 800<br>WASHINGTON, DC 20037 |             |                         | PHAM, TITO QUANG    |                  |
|   |             |                         | ART UNIT            | PAPER NUMBER     |
|   |             |                         | 2616                |                  |

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/998,423

Applicant(s)

FERNANDEZ DURAN ET AL.

Examiner

Tito Pham

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. Claim 3 is objected to because of the following informalities: on line 2 of claim 3, the word "fixed unit" is unnecessary and has no meaning to the claim. It should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to independent claims 1, 2, and 5, Applicant cites a method of allocating frequency in a radiocommunication system comprising recording a number of predetermined parameters which occur during a communication between the remote unit and the fixed unit without taking measurements.

In communication network, the act of recording/collecting information is either synonymous or preceded by the act of measuring. In order to record a certain parameters such as the number of packet errors, one has to make a measurement to determine whether packet contains error or to determine how many errors accumulated during the communication. Also, Applicant does not

specify what types of parameters (C/I, BER, signal quality, etc.) are excluded from measurement. By making a broad “without taking measurements” claim, the claim excludes taking all measurements. Therefore, claims 1, 2, and 5 are contradictory to themselves and are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since claims 3, 4, and 6 are depend on claims 1, 2, and 5, the same analysis is applicable.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Naslund (US Pat. 6,223,031 B1).

- With respect to claim 1, Naslund discloses a method for allocating a carrier frequency in a radiocommunication system (figure 6) in which data bursts are transmitted between a remote unit and a fixed unit, the method comprising,

a) recording a number of predetermined parameters which occur during a communication between the remote unit and the fixed unit without taking measurements (column 6 lines 5-11, column 8 lines 46-64);

b) allocating a probability level to each of a plurality of carrier frequencies allocated to a communication, on the basis of weighting of the recorded parameters (column 6 lines 11-14, column 10 lines 26-44);

c) selecting a carrier frequency, from among the plurality of carrier frequencies, which has a highest probability level to be allocated to a communication (column 6 lines 20-29, column 10 lines 52-67, column 12 lines 10-14).

- With regard to claims 2 and 5, Naslund discloses a system for allocating a radio channel in a wireless communication system (figure 5), the system comprising;

- a) a remote unit (figure 5 reference MS); and
  - b) a fixed unit (figure 5 reference BS) configured to record a number of predetermined parameters which occur during a communication in which data bursts (it is inherent that communication between remote and fixed units in the wireless communication includes both data bursts and continuous connection, and BER is considered as the number of errors accumulated during the communication which includes bursts session) are transmitted between the remote unit and the fixed unit without taking measurements (column 6 lines 5-11, column 8 lines 46-64), allocate a probability level to each of a plurality of carrier frequencies allocated to a communication on the basis of weighting of the recorded parameters (column 6 lines

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11-14, column 10 lines 26-44), and select a carrier frequency, from among the plurality of carrier frequencies, which has a highest probability level to be allocated to a communication (column 6 lines 20-29, column 10 lines 52-67, column 12 lines 10-14).

### ***Allowable Subject Matter***

5. Claims 3, 4, and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

6. Applicant's arguments filed January 19, 2006 have been fully considered but they are not persuasive.

Applicant argues in page 10 that Naslund does not teach or suggest "recording a number of predetermined parameters which occur during communication between remote unit and the fixed unit without taking measurements" as recited in the amended claim 1.

Examiner respectfully disagrees. As stated in the USC 112 second paragraph rejection section, Applicant does not specify what types of parameters are excluded from measurement. By making a broad "without taking measurements" claim, any

measurements that Naslund does not teach can be read into the claim. In this case, Naslund does not teach taking measurement of packet loss.

Applicant further argues in pages 10 and 11 that Naslund only use continuous connection to measure a quality parameter such as bit error rate (BER).

Examiner respectfully disagrees. In wireless, communication between a remote unit and a fixed unit includes both continuous connection and a burst of packet. Also, Examiner interprets bit error rate (BER) as the number of errors which is accumulated during the communication which include data bursts session. Therefore, Naslund discloses all the limitations.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

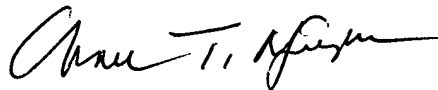
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tito Pham whose telephone number is 571-272-8617. The examiner can normally be reached on 9-6 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CHAU NGUYEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600